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IMPLEMENTATION OF THE DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF

Report of the Secretary-General pursuant to Commission on Human Rights resolution 1985/51

Addendum

This addendum contains a communication from Madagascar.

MADAGASCAR

[Original: French]
[17 January 1986]

In Madagascar, measures for the protection of human rights and fundamental freedoms have long been incorporated into the body of criminal and civil laws. This de facto situation has been strengthened and given concrete form since the accession of the Malagasy Republic to the International Covenant on Civil and Political Rights and its Optional Protocol in June 1970.

Consequently, laws are drafted in accordance with the National Constitution article 6 of which proclaims the equality of all before the law:

Article 6 of the Constitution of 31 December 1975 states: "The law is the expression of the will of the people.

It shall be the same for all, whether in regard to protection, obligation or punishment."

Article 12, embodying the fundamental principles of human rights, prohibits discrimination in any form, including religious discrimination, by stipulating that:

"The State shall ensure the equality of all citizens by: ...

Prohibiting all discrimination based on race, origin, religious belief, level of education, financial means or sex."

Article 39 also provides that:

"Freedom of conscience and religion shall be guaranteed by the neutrality of the State in respect of all beliefs.

Religious worship may be organized and conducted freely in accordance with the law."

The application of these constitutional principles is provided for specifically in:

Article 115 of the Criminal Code:

"Anyone who, on the basis of the origin, colour, sex, family situation or real or presumed membership of an ethnic group, nation, race or specific religion of another person, knowingly denies to that person the enjoyment of a right to which he is entitled, shall be liable to a term of imprisonment of one month to one year and to a fine of 50,000 to 250,000 francs, or to either of these penalties.

The penalties provided for above shall be doubled where the acts in question have been committed by a person in a position of authority or public official in, or on the occasion of, the performance of his duties.

In the cases described in the two foregoing paragraphs, where the perpetrator can prove that he acted on the orders of his superiors for purposes within their competence, and in regard to which they were entitled to be obeyed, only the superiors giving such orders shall be liable to the appropriate penalties.

The present article shall not apply to distinctions, exclusions, restrictions or preferences provided for by laws or regulations relating to nationals or non-nationals of Madagascar."

Amended Ordinance No. 74-041 of 21 March 1975 establishing the Charter of the Press in Madagascar:

Article 63, paragraph 2, states:

"Defamation committed by the same means in respect of a group of persons not referred to in article 62 of this Ordinance but belonging, by virtue of their origin, to one race, nation or specific religion, shall be punished ... when it is intended to arouse hatred among nationals or inhabitants."

Article 64, paragraph 2, at the end, states:

"The maximum penalty ... where the insult is directed at a group of persons belonging, by virtue of their origin, to one race, nation or specific religion, for the purpose of arousing hatred among citizens and residents."